Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act	)	GN Docket No. 09-47
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act	)	GN Docket No. 09-137 CS Docket No. 97-80
______________________________________	)	

COMMENTS OF MONTGOMERY COUNTY MARYLAND
ON NBP PUBLIC NOTICES #30 AND #27

E. Steven Emanuel
Director & Chief Information Officer
Montgomery County Maryland
Department of Technology Services
101 Monroe St., 13th Floor
Rockville, MD 20850

Mitsuko R. Herrera,
Cable Communications Administrator
Montgomery County Maryland
Office of Cable and Communication Services
100 Maryland Ave., Suite 250
Rockville, MD 20850

January 27, 2010

The Montgomery County Office of Cable and Communication Services[1] files these comments to ensure that the Commission is aware of cost issues associated with video device innovation. Montgomery County supports the Commissions efforts to responsibly develop a National Broadband Plan that will promote affordable and accessible broadband service for all consumers.

In previous filings, attached herein, the County has noted the impact of cable converter boxes. The County herein also provides a chart summarizing how many months it would take consumers paying monthly rental fees to purchase equivalent equipment. The County requests that if the Commission's National Broadband Plan addresses integrated video and broadband equipment, the Commission also address in a timely manner, the need to develop uniform equipment standards that will permit development of a commercial market for these devices and a cost-effective means for consumers to obtain these devices.

Sadly, the Commission's twelve-year, still uncompleted, effort to resolve the technical issues associated with commercial navigation devices and cable converter boxes has been woefully inadequate and it is consumers who are paying the price of delay. Moreover, the consequences of the Commission's failure to resolve these issues has been further exacerbated by the broadcast Digital Television Transition, the digitalization and digital encryption of cable television signals, and deployment high definition television.

- Consumers are angry that they were informed that they did not need to purchase digital-to-analog converters if they received broadcast signals via cable, and then

[1] Among its duties, the Office of Cable and Communication Services is responsible for enforcing cable franchise agreements and working with residents, businesses, consumers and cable broadband companies to resolve cable and cable modem service complaints. Visit www.montgomerycountymd.gov/cable for additional information.

were informed after the coupon program expired, that they would need digital tuning adapters to receive digital cable transmissions of broadcast television signals.

- Consumers futilely spend money on universal remotes that will not work with digital adapters now necessary to receive most digital cable channels.
- Consumers spend hundreds of dollars on digital televisions that cannot receive digital cable signals without expensive cable converter boxes because the Commission has not issued technical standards that would permit these functions to be built into televisions.
- Consumers spend thousands of dollars on high definition digital televisions that cannot receive over-the-air HD broadband signals without use of off-air antennas or purchase of HD package upgrades.
- Consumers must now pay monthly rental fees for each television to receive cable television signals.

Many consumers recall a period when the telephone company owned the telephone and fought to prevent consumers from attaching ear cushions to the telephone on grounds that these were harmful network attachments. Yet telephone devices are now readily available from a variety of competitors. Many consumers have opted to purchase cable modem and wireless modem devices rather than pay monthly rental fees. Satellite television customers purchase receivers necessary to receive satellite television. Yet no such option exists for cable services subscribers. If the Commission addresses video device innovation in the National Broadband Plan, the County urges the Commission to move quickly to resolve the technical issues that will permit a competitive commercial market for such devices to develop.

Finally, the County calls the Commission's attention to the issue of the impact of video device integration, bundling of video and data services, and limitation of inter-modal competition. Some consumers would like to purchase television service from one provider, phone service from another provider, and broadband service from another provider. However, as addressed in the attachments, price bundling makes it cost-prohibitive for consumers to purchase services from different competitive providers. The lack of uniform technical standards and the ability of providers to require specific equipment to receive their services will exacerbate this barrier to competition. The County urges the Commission to create uniform technical standards for video and video-broadband devices.

Consumer Equipment Cost Comparison
DirecTV Receiver Purchase vs Monthly Cable Converter Rental
(Number of months at monthly rate to meet equivalent purchase price)

DIRECTV	COMCAST	RCN		VERIZON
	Digital Adapter $1.99	Digital Adapter $3.95		Digital Adapter $3.99
	Analog Basic Only* $1.35			
Standard Receiver $69.00	Digital Converter* $3.45 **(20 months)**	Digital Converter $3.95 **(18 months)**	Additional Converter $6.95 **(10 months)**	Digital Converter $5.99 **(12 months)**
DVR Receiver $99.00		DVR** $17.95 **(6 months)**		
HD Receiver $99.00	HD Converter* $8.20 **(12 months)**	HD Converter $9.95 **(10 mos)**	Additional Converter $11.95 **(9 mos)**	HD Converter $9.99 **(10 months)**
HD DVR Receiver $199.00		HD DVR Converter $14.95 **(14 months)**	Additional Converter $17.95 **(12 months)**	HD DVR Converter $15.99 **(13 months)**
				MultiRoom DVD *** $19.99
Not Required	CableCard $0	CableCard $1.50		CableCard $3.99

*Includes Comcast $0.25 charge for remote control
** No longer advertised on RCN website
*** Requires rental of additional Verizon converters
CableCard enables use of commercially available converter box, *i.e.*, “navigation device,” for unidirectional cable service. (Electronic program guide, video-on-demand, and pay-per-view cannot be accessed.)
Source: Montgomery County Office of Cable and Communications, using Cable Rate Card Information as of July 29, 2009 and available website information as of January 21, 2009

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming	MB Docket No. 07-269

COMMENTS OF MONTGOMERY COUNTY, MARYLAND

E. Steven Emanuel, Chief Information Officer
Mitsuko R. Herrera, Cable Communications Administrator
Office of Cable and Communication Services
Montgomery County
100 Maryland Avenue, Room 250
Rockville, MD 20850

Matthew C. Ames
Marci L. Frischkorn
Miller & Van Eaton, P.L.L.C.
1155 Connecticut Avenue N.W., Suite 1000
Washington, DC 20036-46320
(202) 785-0600

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SUMMARY

Montgomery County, Maryland (the “County”), urges the Commission to re-examine the premises of its analysis of video competition issues. Local governments like Montgomery County have been working hard to promote competitive entry and address the needs of subscribers. The Commission’s policy in recent years has implicitly assumed that the presence of more than one provider in a marketplace is enough to create a fully competitive marketplace. In reality, however, the market for video service is best described as an oligopoly, and it is not fully competitive. This fact has ramifications for a broad range of issues of concern to the Commission and the County, and more active regulation is needed to correct market failures in many areas.

The Notice of Inquiry (“NOI”) asks for comment on the effects of local franchising on competition. The County granted a competitive cable franchise nearly a decade ago, and strongly believes that the most important factor underlying competitive entry decisions is the high cost of new construction. High programming costs are also a very significant factor. On the other hand, although video providers may consider local franchising to be cumbersome, local franchising promotes the public interest by ensuring that local interests and concerns are met. The County urges the Commission to re-examine its policies in this light.

The County’s experience also shows that even with competitive entry many of the promised benefits of competition have not appeared. This is because choice is not the same as competition. Providers have added to their service offerings, bundled services together, and taken other steps to make their services more attractive to subscribers. But subscriber rates continue to go up faster than the rate of inflation, and the presence of more than one provider does not necessarily have any effect on actual prices. Furthermore, the packaging of video

programming services and the bundling of video, telephone and data services make it very difficult for consumers to compare service offerings. And the costs of switching – such as the inconvenience associated with changing email addresses – are significant. Bundling therefore does not advance competition.

In addition, the adoption of statewide franchising and other restrictions on local authority has not benefited consumers. Competition has not lowered prices in Montgomery County. An examination of prices in communities in Texas and Virginia, where limits on local franchising have been adopted, shows that consumers in those states also have not benefited. The County recommends that the Commission conduct a large-scale comparison of states that continue to protect local franchising, such as Maryland, with conditions in states where franchising legislation has been enacted. The County believes that such a study would show that state legislation has not improved competition, the scope of system build-out, or consumer welfare to any significant degree, and in some cases may have harmed it.

The County urges the Commission to address four areas of particular importance to consumers. The NOI specifically requests comment on issues related to the availability of navigation devices and CableCARDS. Unfortunately, despite years of effort, the Commission has not been able to ensure that cable subscribers can purchase their own fully compatible set-top boxes. The NOI also asks for comment regarding changes to the Commission's technical standards; those rules are severely outdated, and the County believes that specific standards for digital programming are needed.

The County also asks that the Commission to examine two issues not raised by the NOI: the Commission's cable customer service rule and the regulation of Internet customer service. The customer service rule is outdated and ineffective. The rule does not meet the public interest, because it does not address many of the key problems subscribers complain about, and the levels of competition that exist now or are likely to exist in the foreseeable future will not solve those problems. The Commission has also discouraged local governments from addressing Internet service complaints, even though service is provided over the same plant as cable service, and bundled together with cable service. Because neither the Commission nor the states are addressing Internet customer service complaints, this market is essentially unregulated and consumers have nowhere to turn. The County urges the Commission to clear the way so local governments can address the complaints of their residents.

Finally, the County urges the Commission to ensure that its analysis of the current market, as well as any conclusions reached in any future proceedings conducted to address matters raised in this docket, is based on a full and fair review of all of the relevant facts. The NOI itself notes, at ¶ 3, that the usefulness of the Commission's final report will depend on the quality of the information it receives. The County agrees wholeheartedly, and applauds the Commission for seeking thorough and complete information. The County also urges the Commission to follow the data where it leads. As noted above, the Commission's policy regarding a range of issues affecting cable television subscribers and local franchising authorities has been based on the flawed assumption that the presence of two wireline providers in a community is sufficient to make the video programming market fully competitive. The County urges the Commission to revisit this assumption and revise its policies accordingly.

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COMMENTS OF MONTGOMERY COUNTY, MARYLAND

I. INTRODUCTION.

Montgomery County, Maryland (the "County"), submits these comments in response to the Commission's Notice of Inquiry (the "NOI"),[1] and urges the Commission to re-examine the premises of its analysis of video competition issues. The Commission's actions in recent years have implicitly assumed that the presence of more than one provider in a marketplace is enough to create a fully competitive marketplace. In reality, however, the market for video service is best described as an oligopoly, and it is not fully competitive.[2] Indeed, the behavior of multichannel video programming distributors described in the Commission's most recent competition report, and further illustrated by the County's experience described below, demonstrates this point. Providers have added to their service offerings, bundled services together, and taken other steps to make their services more attractive to subscribers. But

[1] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, MB Docket 07-269 (rel. Jan. 16, 2009).

[2] *See, e.g.,* S. Derek Turner, DISMANTLING DIGITAL DEREGULATION: TOWARD A NATIONAL BROADBAND STRATEGY (2009) at 20 (broadband market is a duopoly) *available at* http://www.freepress.net/files/dismantling-digital-deregulation.pdf. This discussion pertains to broadband service, but since exactly the same companies are providing video service, the conclusion still holds.

subscriber rates continue to go up faster than the rate of inflation, and the steps taken by providers often make it more difficult for consumers to compare service offerings.

Choice is not the same as competition, and there is ample evidence that the Commission and other bodies with regulatory authority – including local governments – must act in a range of areas to protect the public interest, because market forces alone are inadequate in this environment.

II. MONTGOMERY COUNTY RESIDENTS HAVE LONG HAD A CHOICE OF PROVIDER, YET PRICES CONTINUE TO RISE.

The NOI requests comment on a wide range of issues related to the regulatory environment and barriers to entry, and it is commonly believed that lowering regulatory barriers promotes consumer welfare by encouraging competition. While this is true in some markets and some industries, the experience of Montgomery County shows that local cable franchising does not significantly impede competition, and when competition does arrive many of the presumed benefits to consumers do not follow.

A. The County Has Promoted Commission Policy By Actively Encouraging Entry by Additional Providers.

The NOI requests comment regarding the effects of local franchising on competition,[3] and regarding the effects of recent state franchising legislation and the Commission's own franchising order.[4] Montgomery County[5] was one of the first jurisdictions in the country to introduce wireline competition for video service, with the grant of a cable franchise to Starpower Communications (now RCN) in 1999. In 2006, the County became one of the first large

[3] NOI at ¶ 10.

[4] *Id*.

[5] Montgomery County has a population of 952,500, and comprises 497 square miles and 356,400 households. Montgomery County also manages cable franchise matters for approximately 18 municipalities within its borders.

jurisdictions to grant Verizon a cable franchise.[6] Today, Comcast, Verizon and RCN are all providing voice, video and Internet service to County residents; over 50% of County residents have a choice of at least two providers. This competition arrived without any regulatory mandate from the state or federal governments. Indeed, the Maryland General Assembly recently rejected a proposal for altering the local franchising process.[7] RCN's franchise was awarded long before the recent wave of intervention in the franchising process began, and Verizon's franchise was awarded before the Commission adopted its franchising order.[8]

One potential competitor, Cavalier, did claim to rely on the Commission's *Franchising Order* when it approached the County regarding a cable franchise in early 2007. Nevertheless, that order has had no practical effect in the County, because the order does not fully reflect the behavior and motives of potential providers.

One of the inequities imposed by the *Franchising Order* is that franchising authorities must expend time and money in responding to applications within set time periods, whereas providers have no obligation to follow through on their applications. Shortly after the

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[6] At the time that the franchise was granted, Verizon had been awarded approximately 60 franchises, most by relatively small communities. Today, Verizon has over 800 cable franchises.

[7] Maryland House Bill 1182 as drafted would have replaced franchise fees and taxes on cable and telecommunications services with a sales and use tax on a newly defined category of service, "communications service." The bill would have required local cable franchise fees to be paid not to a locality but to the Maryland Comptroller, and, after a fixed date, would have deprived localities of the power to obtain any new cable franchise fees or even to recover a portion of the sales and use tax collected by the Comptroller. H.B. 1182 also would have empowered the Maryland Public Service Commission ("PSC") to issue a "statewide cable franchise." The bill has been removed from the actively considered agenda of the Ways and Means & Economic Matters Committee. It is unclear whether the bill will be assigned a study committee status this summer.

[8] See Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd. 5101 (2007) ("*Franchising Order*").

Commission released the *Franchising Order*, Cavalier embarked on a campaign to gain access to numerous jurisdictions in Maryland and Virginia, explicitly relying on the rights it claimed to have been granted by the Commission. The County worked diligently to allow Cavalier to join the three incumbent providers at considerable expense in County staff time and outside counsel fees.[9] The County negotiated an agreement with Cavalier, which was scheduled for approval by the County Council. At the last minute, however, Cavalier withdrew its application and the County had no choice but to deny the request.

Cavalier had simultaneously applied for franchises in most of the Washington-area jurisdictions, but its management ultimately decided that it would not be able to compete successfully in the video business. The company's withdrawal in Montgomery County coincided with similar action in many other jurisdictions, including Arlington County, Fairfax County, and the City of Alexandria in Virginia. These jurisdictions all were forced to devote significant staff and consultant time to respond to Cavalier's application, all to no purpose. Indeed, the County is not aware of any jurisdiction in which the Commission's *Franchising Order* has actually had any effect.

It is also worth noting that RCN, which was granted a franchise to serve Arlington County shortly after it received its Montgomery County franchise, has reduced its original service area in Montgomery County, and never constructed its system in Arlington. The fact is that head-to-head competition is very difficult to achieve and sustain. Two large companies, such as Verizon and Comcast, may be able to compete in a given market over the long term, but this is far from certain, and nobody should have any illusion about the true nature of the marketplace in the County or anywhere else. That market is now and is likely to remain a

[9] The County's out-of-pocket expenses for attorneys' fees came to nearly $ 24,000.

duopoly. The barriers to competition have always been rooted in the enormous capital cost of constructing competitive networks,[10] as well as the cost of programming,[11] and not in the local franchising process.[12] This fact has important ramifications for Commission policy and for subscribers, and the County urges the Commission to consider the true nature of the market in formulating future policy.

B. Head-to-Head "Competition" Has Led to Bigger Cable Packages, More Channels on the Digital Tier – and Higher Prices.

The NOI asks for information about the benefits of head-to-head competition, including what effect competition has had on prices, programming, quality of service, and the introduction of more advanced services.[13] While the County believes that competition has provided benefits to subscribers, the County also believes that those benefits often have been neither as clear nor as great as is sometimes suggested. Any effect on prices has been limited, and many of the other effects of competition are actually mixed blessings.

1. Prices Keep Going Up.

Whatever else one might say about the cable television market, it cannot be said that prices are coming down or even holding steady. Nor has the presence of competition seem to have had much effect. Not only have Montgomery County residents had access to DBS service

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[10] For example, the capital cost of Verizon's FTTP construction has been estimated to be over $23 billion. Stephanie N. Mehta, *Bend It Like Corning*, Fortune, Aug. 6, 2007 at 69. *See also Annual Assessment of the Status of Competition on the Market for the Delivery of Video Programming*, Thirteenth Annual Report, MB Docket No. 06-189 (rel. Jan. 16, 2009) ("Thirteenth Annual Report") at n.453.

[11] Thirteenth Annual Report, pp. 48, 51-53.

[12] Testimony of Ivan G. Seidenberg, Chairman & Chief Executive Officer, Verizon Communications, before the Senate Commerce Committee, January 31, 2006 available at http://commerce.senate.gov/pdf/Seidenberg-021506.pdf

[13] NOI at ¶¶ 5-8.

throughout that period,[14] but as discussed below neither RCN's nor Verizon's entry seem to have had any significant effect on cable prices. It is possible that rates would have gone up by even more if neither RCN nor Verizon had entered the market. But the fact remains that prices have continued to rise and neither the market nor the Commission have prevented these increases.

For example, between January 2005 and January 2009, Comcast's price for basic cable service in the County has risen from $15.00 per month to $19.25 – a total increase of over 28%, and an average increase of seven percent per year. This compares to a total increase in the consumer price index during the same period of only 10.7%.[15] Verizon introduced a basic rate of $12.99 when it began service in 2006, and it has not increased that rate since. But Comcast's basic rate has continued to go up, from $16.25 when Verizon entered the market, to, again, $19.25 today. In fact, Comcast's rates have gone up more since Verizon received its franchise than they had in the comparable period before Verizon entered the market: from January 2005 through January 2007, Comcast's basic rate increased by $1.25; from January 2007, just after Verizon's entry, through January 2009, Comcast's basic rate has increased by another $3.00. *See* Table 1.[16]

Rates for expanded basic – cable programming tier service – show similar trends. Comcast's rate has increased from $54.40 at the beginning of 2007 to $63.30 two years later: a 12.7% increase. *See* Table 1. The rate for RCN's comparable service has increased from $53.95 in January 2007 to $61.44 today; this is a 13.8% increase. *See* Table 1. Verizon's rate,

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[14] See discussion at Section V, *infra*.

[15] U.S. Dept. of Labor, Bureau of Labor Statistics, Consumer Price Index, All Consumers at http://data.bls.gov/PDq/outside.jsp?survey=cu.

[16] Note that the County does not have historical information on RCN's basic rate.

however, has increased from $39.99 to $49.99, which is a 25% increase in two years,[17] and six times the 4.3%[18] by which the CPI increased during the same period.[19]

Whatever the reasons for these continued price increases, local franchising is not one of them. It is reasonable to assume, however, that Verizon's priority is to gain market share as it rolls out its network, while Comcast and RCN seek to maximize revenue from existing customers. Perhaps at some point in the future prices will converge, with Verizon raising its rates and Comcast's coming down – but at that point it would seem that both companies would have the incentive to maintain comparable prices, and no incentive to reduce them, or even to limit increases to the general rate of inflation. In fact, this kind of pricing behavior is not uncommon in oligopolies.[20]

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[17] *See* Table 1.

[18] U.S. Dept. of Labor, Bureau of Labor Statistics, Consumer Price Index, All Consumers *available at* http://data.bls.gov/PDQ/outside.jsp?survey-cu.

[19] The County recognizes that the number of channels on the respective programming tiers is a relevant factor, and that a thorough analysis would address per channel rates. In fact, Comcast's tier structure has not changed dramatically during this period. In January 2005, there were 35 channels on the basic tier and 45 on the expanded basic tier; today, there are 34 and 39, respectively. It is also important to remember that often when new channels are added they have relatively low viewership and therefore cost the operator relatively little. Most of an operator's programming costs result from broadcast channels and sports programming. In any event, the key factor from the consumer's perspective is the actual rate the consumer must pay, and consumers have no control over the content of the programming packages they buy. Consequently, in assessing the benefits of competitive entry, the price per channel is a secondary consideration.

[20] *See, e.g.*, Hubert Humphrey Institute of Public Affairs, *Statewide Video Franchising Legislation: A Comparative Study of Outcomes in Texas, California and Michigan* (Mar. 2009) ("Minnesota Report"), at p. 25. *See also* Oligopoly: George Hay, *Oligopoly, Shared Monopoly, and Antitrust Law,* 67 CORNELL L. REV. 439 (1982), at 441:

> The traditional economic analysis of oligopoly, on the other hand, portrays the process of achieving a noncompetitive end as involving separate, albeit interdependent, decisions by each firm. Because the number of firms in an oligopolistic industry is small, each firm recognizes that its own actions will have a substantial impact on the economic well-being of its rivals and will probably provoke some reaction from them. If one firm cuts prices in an effort to boost sales, rivals may be compelled to match the price cut, not only rendering the

TABLE 1 – Cable Service Rates in Montgomery County[21]

	2005	2006	2007	2008	2009
Comcast					
Basic	$15.00	$16.25	$16.25	$17.25	$19.25
Expanded Basic	$52.40	$53.65	$54.40	$60.35	$63.30
RCN					
Basic*					
Expanded Basic	$43.00	$49.95	$53.95	$56.94	$61.44
Verizon					
Basic	--	--	$12.99	$12.99	$12.99
Expanded Basic	--	--	$39.99	$47.99	$47.99

* Not available.

2. Local Competition Does Not Necessarily Affect Local Pricing.

Head-to-head competition has not restrained prices simply because providers consider more than just the existence of a competitor in setting rates. Providers do not seek merely to undercut their competitors; instead, they consider a range of factors. For example, providers often set rates on a regional or national basis, presumably because they prefer to market a single rate rather than a profusion of individual local rates.

The best example of this is Verizon. Verizon appears to set rates on a national basis, which means that an incumbent cable operator's prices are simply irrelevant. The County cannot confirm that Verizon charges the same rates nationally because Verizon's website does not readily show rates in specific areas unless a customer provides a specific address. But the website clearly discloses that the company is running the same promotions on a national basis, and the County's survey of Verizon's rates in the Washington metropolitan area shows that Verizon is charging the same rates across the region. Verizon's rates for basic and expanded

initial effort to secure additional volume unsuccessful, but making all firms worse off than before. When all firms anticipate this chain of events and recognize that a price reduction is against their self-interest, no price cutting will occur and they can achieve and maintain a noncompetitive price.

[21] For ease of comparison, rates listed are those in effect on January 15 of each year.

basic service are identical in Fairfax, Arlington, and Montgomery Counties.[22] If Verizon does set rates on a national basis, then it is not responding at all to local price signals.

Cox Communications provides another example. Cox appears to set rates on a regional basis, and prices from region to region do not differ very much. For example, Cox charges $46.99[23] for expanded basic service in Fairfax, and $48.95 for the same service in all of its Hampton Roads systems, both areas in which it is competing with Verizon, which charges $47.99. In both Phoenix and Tucson, however, where Cox does not have a wireline competitor, Cox charges $47.95 for comparable service. This suggests that the existence of local competition and the rate charged by any local competitor have little bearing on pricing decisions.

Comcast, on the other hand, has not adopted uniform pricing, nor has it lowered its rates to meet Verizon's. Comcast charges $19.25 for basic service in Montgomery County, $16.96 in Fairfax and $18.95 in Arlington, compared to Verizon's $12.99.[24] Comcast's corresponding rates for expanded basic service are $63.30, $55.96, and $60.20, while Verizon charges $47.99.[25] There are clearly other factors at work in Comcast's pricing decisions. Channel selection and therefore programming costs could be a factor in particular jurisdictions, but this merely highlights the fact that subscribers do not really get to choose what they pay for.

[22] *See* Tables 1 - 3.

[23] Cox implemented a rate increase to $52.99 effective April 19, 2009.

[24] *See* Tables 1 - 3.

[25] *See* Tables 1 - 3.

TABLE 2 – Cable Service Rates in Fairfax County[26]

	2005	2006	2007	2008	2009
Comcast					
Basic	$13.45	$14.95	$14.95	$14.95	$16.96
Expanded Basic	$44.85	$49.88	$51.88	$55.95	$55.96
Cox					
Basic	$14.70	$17.99	$17.99	$19.99	$19.99
Expanded Basic	$40.40	$41.99	$43.99	$46.99	$46.99
Verizon					
Basic	--	$12.95	$12.99	$12.99	$12.99
Expanded Basic	--	$39.95	$42.99	$47.99	$47.99

TABLE 3 – Cable Service Rates in Arlington County[27]

	2006	2007	2008	2009
Comcast				
Basic	$14.25	$14.85	$14.95	$18.95
Expanded Basic	$49.38	$51.20	57.35	$60.20
Verizon				
Basic	12.95	$12.99	$12.99	$12.99
Expanded Basic	39.95	$42.99	$42.99	$47.99

If providers are not paying much attention to competitors' prices in setting their own rates, or give greater weight to other considerations, such as the convenience of regional marketing, then competitive entry may not be having a significant effect on prices. Rather than assuming that certain benefits will automatically flow from the introduction of competition, the Commission should determine what factors providers actually consider and develop a more precise model of the behavior of providers.[28]

[26] For ease of comparison, rates listed are those in effect on January 15 of each year.

[27] For ease of comparison, rates listed are those in effect on January 15 of each year.

[28] One area in which a more refined analysis could be useful is in the determination of effective competition. Although the Commission's discretion is somewhat limited by the language of Section 623(l)(1), a better understanding of the dynamics underlying the pricing decisions of providers might justify reexamining the Commission's interpretation of the statutory language.

3. Subscribers Have More Choices, But No Good Way To Evaluate Those Choices.

It is true that subscribers are getting more in their cable packages. In addition, the number of packages available has proliferated, to the point of bewilderment. Subscribers are getting choices – but whether they are given the information needed to evaluate those choices is another question entirely.

In Montgomery County, for example, Comcast offers two tiers of analog cable service (the traditional Limited Basic and Expanded Basic) plus nine digital cable packages, additional add-on digital services (Sports Entertainment Pack and Family Tier), and over a dozen separate premium services, not including pay-per-view. Comcast also offers three levels of high-speed Internet service. Consumers can probably navigate these options reasonably well, on a service-by-service basis. When one begins to look at the bundled packages, however, the choices become very difficult to evaluate. Comcast offers four triple-play packages, ranging in price from $134.99 to $209.99, and three digital video and Internet packages, ranging in price from $118.20 to $142.20. As discussed further below, it is essentially impossible to evaluate these bundles – they can be compared to each other, but consumers cannot readily compare the price of a bundle from one provider against the price of a bundle from another.

Verizon's cable offerings are much simpler: a basic tier, a large expanded digital tier and an HD tier, plus a single movie package and a handful of individual premium channels. Verizon also offers four tiers of Internet service and at least two triple play options. But Verizon does not provide a single printed rate card showing all of its video and Internet services.

One significant consumer issue that the Commission should address is the way providers disclose the existence of the lowest-priced basic cable service tier. For example, Verizon shows the basic tier on the video service menu on its website, but not in the same format as the other packages: the basic tier is referred to in a single line, and in a gray typeface that is easy to miss. On Comcast's website, on the other hand, the basic service tier is either not listed or at least very hard for a user to find. Cox Cable's website for Fairfax County, Virginia, only reveals the basic service rate after a specific word search. Indeed, this issue is just one illustration of how difficult it is for consumers to get information about their choices. Any effort to use the company's websites to compare services and especially prices is best described as an exercise in frustration.

Another area in which the Commission could play a role would be to require providers to identify what it would cost for subscribers to purchase the programming most people watch.[29] For instance, the Commission's Thirteenth Annual Report identifies the top 20 programming services by prime time viewership.[30] The Commission should consider the feasibility of requiring operators to offer a standard tier, consisting of a standard group of channels, such as the local broadcast channels plus the 10 or 15 or 20 most-watched cable networks.[31] This would allow consumers to comparison-shop more easily. Providers could include whatever else they chose in the packages, but at least potential subscribers would be able to better evaluate their choices.

4. <u>Bundling Does Not Advance Competition.</u>

The NOI asks what effects bundling has on head-to-head competition.[32] The answer is that, while bundling gives consumers more choices, it does not advance competition. Although

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[29] The County is not asserting here that the Commission should impose a la carte pricing.

[30] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, MB Docket 06-189 (rel. Jan. 16, 2009), at Table C-6. These 20 channels are: USA Network, Disney, TNT, Nickelodeon, Adult Swim, HBO, Lifetime, TBS, Nick at Nite, American Movie Classics, Cartoon Network, Fox News Channel, ESPN, Spike TV, FX, Discovery Channel, Comedy Central, HGTV, Hallmark Channel, MTV.

[31] *Id*.

[32] NOI at ¶ 5.

bundling is presented as a convenience to the consumer – one stop shopping, so to speak – an alternative purpose of bundling is to create a new product for the provider to sell. The consumer is not really buying three separate services. What the consumer actually buys is a single complex product, which is even harder to evaluate on its own merits and compare to other products than the individual components. Creating this new product – with its mix of features individual consumers might not choose to purchase if they could choose or reject them separately – thus helps the provider maximize revenue.

The County understands that providers are trying to differentiate their products from those of their competitors. This is reasonable from the perspective of the providers, but at the same time it creates problems for consumers. Ensuring that information and education is available to consumers is the only way to balance the scale.

In its current form, bundling favors providers because customers are forced to choose between providers based on confusing and incomplete information. In a fully competitive marketplace, it might be in the interest of at least one provider to make available full information about its product, so that potential customers could make informed decisions, but this is not the case in an oligopoly. Bundles actually make it harder to compare prices and services because it is practically impossible for prospective customers to compare the bundles to an objective standard or to each other. In comparing two triple-play packages, for instance, none of the services may be readily comparable: one video service may be analog and another digital, the number of channels may differ significantly, and there may be significant differences in the program offerings. The speed of the broadband services may differ substantially. And even the voice services may be different, since packages may include VoIP, traditional copper wire

POTS, fiber-based switched digital voice, or copper-based switched service provided by the cable company.

Bundling does lower prices, as long as the consumer is only looking at the cost of the bundle as compared to the cost of purchasing all three services from the same provider. But the consumer cannot get the benefit of the lower "bundled" price on individual services without paying for all three. In addition, bundled packages typically include progressively higher levels of both video and Internet service; subscribers typically cannot choose a high level of Internet service and the lowest tier of cable service, for example. Thus, consumers may well end up paying more than they would if they could pay the discounted rates for each service from different providers. Furthermore, within the context of comparing bundled offerings, it is difficult to say whether the providers actually respond to each other's prices. Presumably, the prices of bundles will be higher in communities where there is still only one video provider – but given how hard it is to compare bundles this is far from clear.

Bundling also favors providers because consumers cannot readily buy different services from different providers: although it is possible to do so, the cost differential makes this irrational for the vast majority of customers. So long as customers have no benchmark by which to compare bundlers from different providers, providers will be able to minimize the role price plays in purchasing decisions, and consequently will be able to charge more than they otherwise would. Bundles thus limit competition, because although the price of choosing service from more than one provider is a total higher rate, the price of choosing bundled service from a single provider may also be greater than the consumer would pay if he or she had more control over the content of the bundle.

Bundling also protects providers at the expense of consumers because of the costs to subscribers of switching. First, to get the benefit of the lower prices offered through a bundle, subscribers often must sign long-term contracts, which raises the cost of switching. Second, there is simply the likelihood that existing subscribers will accept increases in the price of a bundle because it will be hard for them to tell if a different bundle is cheaper or has gone up proportionately less. Third, there is the cost associated with changing providers, which has significant intangible components. For example, changing from one triple-play provider to another typically entails a change in e-mail addresses.

The Commission's experience with competition in the long distance market is not necessarily a good guide on this point, because customers of wireline providers will be substantially less likely to change providers if the switch requires an on-premises visit by a technician. On the other hand, the Commission's experience with the benefits of number portability in the wireless industry is a good guide: so long as e-mail addresses are tied to the service provider, consumers will find it harder to change providers.

In short, the opportunity to choose providers does not necessarily result in the benefits of a fully competitive marketplace. If consumers are to receive accurate information, regulatory intervention is required. Furthermore, regulation or the prospect of regulation can create a rationale for the market to respond by making more information available to consumers. The County urges the Commission to examine this issue in much more detail. One example of how the Commission could promote consumer welfare would be to develop a set of benchmarks for bundled services, and require operators to offer consumers information comparing their bundles to the benchmarks. To be meaningful, the benchmark would need to include a regional or national pricing standard, such as cents per channel or cents per Mbps.

III. THE ADOPTION OF STATEWIDE FRANCHISING AND OTHER RESTRICTIONS ON LOCAL AUTHORITY HAS NOT REALLY ADVANCED COMPETITIVE ENTRY OR BENEFITED CONSUMERS.

In recent years, the Commission and many state legislatures have taken steps to reduce or eliminate local franchising authority, in the belief that local franchising impedes competition. The NOI seeks comment on franchising and other local and state regulations and the effect on the marketplace, and on the effects of the local franchising prices on entry by new providers.[33] The County believes that local franchising does not significantly restrict competitive entry, and offers substantial benefits to the public. Competitive providers will enter individual markets when they believe that local conditions will allow them to earn a reasonable return on their investment in infrastructure, and the extent of local authority over franchising has little, if anything, to do with that analysis. To illustrate this, the County has examined the experience of jurisdictions in three different states: Texas, which has adopted statewide franchising; Virginia, which has retained local franchising while restricting local authority, and Maryland, which has done neither. The County urges the Commission to conduct a similar comparison on a larger scale.[34]

[33] NOI at ¶ 10.

[34] Work is already being done in this area. The Alliance for Community Media ("ACM") has conducted a survey regarding the effects of franchising reform, which concludes, among other things, that new state legislation has led neither to lower prices nor improved customer service. Barbara Popovic, *Assessing the Damage: Survey shows that state video franchise laws bring no rate releive while harming public benefits, available at* www.ourchannels.org/wp-content/uploads/2008/09/harmsurveyreportacm08.pdf. Another example is the Minnesota Report cited earlier, which compared the situation in California, Michigan and Texas. *See also* National Association of Telecommunications Officers and Advisors, *Understanding the Impact of State Video Services Legislation, available at* http://www.natoa.org/Documents/StateLegSurveyExecSummFinal.pdf.

Texas

Austin, Texas, currently has three wireline video programming providers: Time Warner, Grande Communications, and AT&T. Texas adopted statewide franchising in 2005, but the state law has had no significant effect in Austin. Grande had obtained its franchise in 2001, before the Texas legislation was enacted. AT&T did enter after the state law was passed, but it serves only a relative handful of subscribers in the city, and has shown no interest in competing vigorously.[35] Furthermore, although Grande's entry gave subscribers a choice of providers, it has not led to reduced rates in Austin, as the table below shows.

TABLE 4 – Cable Service Rates in Austin, Texas

	2002	2003	2004	2005	2006	2007	2008
Time Warner							
Basic	8.58	8.58	$10.50	$10.50	$10.50	$14.95*	$16.95*
Grande							
Basic	--	$10.50	$10.50	$10.50	$13.50	n.a.	$16.95

*$19.95 for new subscribers.

It is impossible to evaluate the effect of AT&T's entry on prices: AT&T does not offer a video-only subscription, which makes it harder for consumers to compare AT&T's service with those of its competitors. Grande's entry, however, definitely seems to have led to significant price increases. As the table shows, after Grande entered the marketplace in 2003, Time Warner actually raised its rate for basic service to match Grande's. When Grande raised its rate in 2006, Time Warner again raised its rate. Time Warner was held to be subject to effective competition in 2007, and today both companies charge existing subscribers the same rate of $16.95.[36] Time

[35] *See* Declaration of Rondella M. Hawkins, attached as Exhibit A.

[36] The two basic tiers are roughly comparable, with 20 channels on Time Warner's basic tier and 17 on Grande's.

Warner subscribers are paying $8.37 a month more for basic service than they were in 2003, almost twice what they were paying at the time.

Thus, statewide franchising has had no significant effect on competition in Austin, and competition in the City has not led to lower prices.

Virginia

Fairfax County, Virginia, is also served by three providers. Cox Communications serves most of the County, and Comcast is the incumbent cable operator in the Reston area; the two do not compete head-to-head. Verizon has held a cable franchise from the County since 2005. Verizon actually sought and received that franchise before the Virginia General Assembly amended state law to limit local authority and expedite entry. In addition, as discussed above, Verizon's entry in Fairfax County has had little effect on the rates charged by the incumbents. Furthermore, because Fairfax County is a very attractive market, there is no reason to believe that, once Verizon decided to build its FTTP network, it would not have sought to serve the County.

Verizon has used the new state law to its advantage to obtain favorable terms from other jurisdictions – but Verizon has not actually sought franchises under the new law.[37] Instead, it has used the threat of the new law to force franchising authorities to accept Verizon's terms. Furthermore, Verizon has only approached the most populous jurisdictions in the state: Verizon's franchises run from the Washington, D.C., suburbs down Interstate 95 to Richmond, and from the Richmond suburbs down Interstate 64 to the Hampton Roads area. Verizon has

[37] Verizon did rely on the new "ordinance franchise" mechanism to obtain a franchise in the City of Virginia Beach – but that was only an interim measure, and within a matter of months that franchise was replaced with a traditional negotiated agreement. Montgomery County is not aware of any jurisdiction in Virginia in which Verizon now has a non-traditional franchise.

expressed little interest in building its new network in less densely populated areas.[38] The state law may have given Verizon more favorable terms, but that does not mean that without the law the company would not have sought and obtained franchises from the same Virginia jurisdictions where it is active today.

Maryland

Finally, as noted above, there are two competitors in Montgomery County, in addition to Comcast, even though no state law has been adopted. Indeed, Verizon now serves the six largest counties in Maryland, representing a majority of the state's population.[39]

The fact of the matter is that the inhibiting factors for Verizon and AT&T (and, in Montgomery County, RCN) have been the high capital cost of building new networks[40] and, in the case of AT&T, difficulties in rolling out the necessary technology.[41] Among the factors that affect a provider's capital costs are the proportion of underground vs. aerial construction required in an area, the density of homes per mile, and the number of multiple dwelling unit buildings to be served. Limiting local authority has reduced transaction costs for new providers, but this is a marginal benefit when compared to the costs of capital and technology development, and other

[38] For example, Verizon's franchise in Powhatan County, to the west of Richmond, only covers the eastern third of the County, which abuts fast-growing Chesterfield County.

[39] Verizon has franchises from Anne Arundel, (pop. 512,790), Baltimore (pop. 785,618), Harford (pop. 240,351), Howard (pop. 274,995), Montgomery (pop. 950,680) and Prince George's (pop. 820,852) Counties, and is nearing completion of the approval process in Charles County (pop. 140,764). Altogether that comes to just over 61% of the state's population. Source: Population Division, U.S. Census Bureau, Table 1: Annual Estimates of the Resident Population for Counties of Maryland: April 1, 2000 to July 1, 2008 (CO-EST2008-01-24) (Release Date: March 19, 2009).

[40] As noted above, Verizon is spending at least $23 billion on its FTTP network. Fortune, Aug.6, 2007 ay 69. Estimates range from $1000 to $1700 per home passed. Minnesota Report, at 13.

[41] Eric Bangeman, *AT&T scales back U-Verse expectations*, ARS TECHNICA (Mar. 2, 2007), available at http://arstechnica.com/business/news/2007/03/8969.ars.

factors. In fact, AT&T recently announced that it is slowing the pace of its U-Verse deployment.[42]

Indeed, nationwide, AT&T reports having 1.3 million U-Verse subscribers,[43] far fewer than the 2.2 million reported by Verizon,[44] even though AT&T has been very successful in convincing state legislatures in its territory to adopt state-wide franchising legislation. Indeed, Verizon's success illustrates that franchising "reform" is not essential to promoting competitive entry. The key factors are a good product, a good business plan, access to capital, and commitment to success.

The examples of Austin and Fairfax County illustrate that subscribers in states that have restricted local authority are no better off than subscribers in states such as Maryland, which has not done so. The presence of a competitor in these jurisdictions has not dramatically affected prices;[45] it certainly has not induced the incumbent cable operator to reduce its prices or limit increases to the general rate of inflation. In other words, state and Federal limits on local power have restricted local ability to address local needs, without actually accomplishing federal policy goals. All they have done is marginally lower the cost of entry by one provider in a handful of states. This is not a success story, and the County urges the Commission to consider these facts in formulating future policy. The County also again urges the Commission to conduct a detailed study comparing the state of competition and the effects of competitive entry in a range of states subject to different regulatory schemes.

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[42] Carol Wilson, *AT&T slows U-verse buildout, remains committed to video*, TELEPHONY ONLINE (Jan. 28, 2009).

[43] AT&T Form 10-Q, p. 22 (March 31, 2009).

[44] Verizon News Release, Verizon Communications Reports Revenue, Earnings and Cash Flow Growth in 1Q 2009 (April 27, 2009).

[45] *See* Tables 2 and 4.

IV. THE COMMISSION SHOULD REEXAMINE AND REASSERT ITS ROLE REGARDING A RANGE OF SUBJECTS CRITICAL TO SUBSCRIBERS, BECAUSE THE MARKET WILL NOT ADDRESS THOSE MATTERS.

The Commission has not kept up with four important issues that directly affect subscribers. The NOI specifically requests comment on issues related to the availability of navigation devices and CableCARDS.[46] Unfortunately, despite years of effort, the Commission has not been able to ensure that cable subscribers can purchase their own fully compatible set-top boxes. The NOI also asks for comment regarding changes to the Commission's technical standards;[47] the County believes these standards do not reflect the deployment of digital technology. Finally, the County urges the Commission to examine two issues not raised by the NOI: the Commission's customer service rules are badly out-of-date, and the Commission's inaction has undercut efforts by local franchising authorities to address the complaints of broadband Internet service subscribers.

A. The Commission's Failure To Fully Implement Section 629 of the Communications Act Imposes Substantial Costs on Consumers.

Section 629 of the Communications Act requires the Commission to adopt rules permitting cable subscribers to purchase their own converter boxes and other equipment needed to access services provided by cable operators. In adopting Section 629 in 1996, Congress sought to promote competition in the provision of such devices, while recognizing the concerns of cable operators for protecting signal security. Over ten years have passed since the Commission released its first order under Section 629,[48] and subscribers still cannot buy user-friendly devices from electronics retailers. While the County recognizes that this is a

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[46] NOI at ¶¶ 83, 86.

[47] NOI at ¶ 89.

[48] *In the Matter of Implementation of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices, Report and Order*, 13 FCC Rcd 14775 (1998).

challenging problem, both because of the technical issues involved and because it is so hard to keep pace with technological change, the fact remains that the failure to resolve this issue amounts to a substantial burden on subscribers.

For example, Comcast currently charges its subscribers in the County $3.65 a month for an addressable converter and remote control; the rate for expanded basic service is $63.30 a month. Thus, subscribers are paying an additional 5.8% a month to the cable operator, for a single converter. An HDTV converter plus remote costs $8.20, or an additional 12.9%, if the subscriber is paying only for expanded basic service. Households with multiple television sets and additional converters are paying even more.

Further, as shown in Table 5, Verizon and RCN subscribers pay substantially more for equipment. Verizon charges $7.99 a month for a digital converter box, and $9.99 for an HD converter. RCN charges $3.95 for a single digital converter, $6.95 for additional converters, and $11.95 for an HD converter. A Verizon basic-only customer thus pays an additional 61% over the rate of basic cable service, a Verizon expanded basic customer pays an extra 16.6%, and a Verizon HD customer pays an additional 17.2%, all because subscribers cannot buy their own converters on the open market.

TABLE 5. Equipment Rates

	Comcast	Verizon	RCN
Standard converter	1.10	n.a	n.a
Digital converter	3.40	7.99	3.95
HD converter	7.95	9.99	11.95
Remote	0.25	no charge	no charge

Subscribers do have the option of obtaining CableCARDs from their providers, but as the Commission knows, consumers have not found CableCARD to be a particularly useful technology. CableCARDS do not permit the use of the full, two-way functionality of a modern cable system, and many consumers do not own CableCARD compatible equipment. Furthermore, although Comcast does not charge for CableCARDs in Montgomery County, Verizon and RCN charge $3.99 and $1.50 monthly, respectively. Of course, if competitive devices were available at retail, consumers who bought such equipment would have to pay the retailer, and some subscribers would still choose to rent, but the lack of an alternative satisfactory to most consumers still means that subscribers are paying more than they should.[49]

The County urges the Commission to redouble its efforts in this area.

B. The Commission's Technical Standards Are Out of Date.

The FCC has never adopted technical standards for digital channels, even though some providers no longer provide analog service at all, and it is only a matter of time before analog service disappears. Digital technical standards are needed, just as much as analog standards ever were, if subscribers are to have any assurance that they will continue to receive good quality signals.

Because digital service is new and offers crisper pictures than analog service, there is a perception that it never fails and standards are not needed. But digital service raises new problems – such as frozen pictures and tiling – that did not occur on traditional analog systems. A whole range of factors can affect signal quality: active and passive components in a fiber network, set-top boxes, and transmission distances, among other things, can help degrade signal quality in ways that are visible on a subscriber's television set. In addition, operators may wish to compress channels in order to save money on equipment, or to compress channels in ways that reduce picture quality in an effort to reserve bandwidth for other uses. The fact is that

[49] The Commission could also, at least as an interim measure, encourage providers to sell rather than lease equipment to subscribers. Long term residents might benefit if they had that option.

subscribers to digital service do experience problems with their picture quality; even if digital quality is higher on the whole than analog quality, subscribers have the right to get what they pay for.

Finally, the Commission's rules should be amended to address the treatment of PEG programming in the digital environment. This is a very important issue for the County, because the County's PEG channels provided almost 61,000 hours of local programming in 2008. The Commission's rules do not require cable operators to list local PEG programming in their digital program guides.[50] This means that for many subscribers those programs might as well not exist – even though they receive them, they may never realize they are on the system. In addition, if viewers do come across them by chance, they may be unable to identify what they are watching, and their absence from the digital program guide limits the ability of subscribers to take advantage of the full functionality of the cable system, such as the ability to use a DVR to record programming on the PEG channels. As consumers get used to using DVRs to watch programming at times convenient to them, this will become an even greater issue.

The NOI also seeks comment on digital migration issues.[51] In Montgomery County, RCN and Verizon have completed this process; the County believes that it is far less disruptive to subscribers if the migration is done all at once, as those companies did.

A national digital technical standard would establish a level playing field for all types of operators, assure subscribers of a basic level of service quality, and assure PEG programmers of fair treatment.

[50] The NOI seeks comment regarding program guides at ¶ 83.

[51] NOI at ¶ 59.

C. The Commission's Customer Service Rule Is Also Outdated.

The Commission's customer service rule took effect on July 1, 1993, and except for minor amendments in 1996 and 2000, has remained unchanged since.[52] The cable industry, however, has evolved dramatically since 1993 and the rule is now very much out of date – it does not address the kinds of problems that franchising authorities and subscribers typically face today. If national standards are necessary to avoid a proliferation of individual local standards, then it is essential for the Commission and the industry to keep those standards up to date.

In terms of the category of complaints received from subscribers, the most common concerns billing problems, as seen here:

TABLE 6: Types of Complaints

Fiscal Year	Billing	Internet Service	Reception	Other
2008	39.1%	24.3%	23.2%	13.4%
2009	39.9%	17.3%	22.8%	20.0%

In reality, however, the chief complaint of subscribers is that providers do not take their complaints seriously. This manifests itself in several ways:

- It takes too long for complaints to be resolved, and when complaints are "resolved," many subscribers remain dissatisfied with the outcome.[53]
- When subscribers register complaints, they are put on hold for long periods of time, supervisors are not available, and supervisors do not return calls even when a customer service representative has promised such a call will be made.

[52] 47 C.F.R. § 76.309.

[53] In both 2008 and 2009, over 20% of subscribers surveyed report that they were not satisfied with the resolution of specific complaints they raised with their providers.

- Subscribers express frustration with the inability of cable companies to diagnose and correct problems in the first service call.
- Cable companies will only schedule service calls for a specific address; even when a subscriber has checked with neighbors and concluded that problem affects a broader area, customer service representatives have no authority to take further action.

Subscribers often report having to make multiple telephone calls before matters are resolved, but the Commission's rules say nothing about how effective or efficient an operator's resolution process should be. These are the issues that really matter: Why did the subscriber have to call in the first place? Was the complaint resolved in a single call? And did the subscriber agree that the matter was properly resolved?

Another problem that generates a great deal of subscriber frustration concerns promotional offers, which sometimes are not well planned or executed. For instance, Verizon's offer of an HDTV set to new subscribers raised expectations that the set would be provided upon installation, when in fact subscribers had to go to a website to register for the set. And when the company ran out of free sets the offer was replaced with a gift certificate. The Commission's rules say nothing about this kind of issue, and subscribers feel that customer service representatives are not held accountable form providing misleading or incorrect information. One possible solution would be for the Commission to develop a standard format and content requirements for promotional and other offers made by providers. If terms and conditions were fully and clearly disclosed, using the same format, subscribers would be better able to compare and evaluate offers.

The problems discussed above are not addressed at all by the Commission's rules, but even many of the issues that are addressed by the rule are not relevant to subscribers. For example, 47 C.F.R. § 76.309(c)(1) addresses telephone answering standards, but only in terms of the problems subscribers complained about in 1993, before the wide-spread use of large regional or national call centers. The rule requires company representatives to be available during normal business hours, permits after hours calls to be answered by an answering machine, requires the phone to be answered within thirty seconds, and specifies that customers may receive a busy signal no more than three percent of the time. These standards are readily met today by any automatic response unit. Furthermore, the complaints customers have today have to do with cumbersome and confusing call answering menus, and the inability to reach live customer service representatives easily. Technology has advanced, but the Commission's rule has not.

Similarly, 47 C.F.R. § 76.309(c)(2) requires a cable operator to complete an initial installation within seven days of an order being placed. Verizon, however, does not comply with this rule: Because Verizon's system requires installation of an optical network termination device before cable service can be provided, Verizon insists on franchise standards that allow Verizon seven days to install the ONT, and additional time – typically another seven days – to install cable service. Only if an ONT is already in place will Verizon comply with the single seven-day standard. The vast majority of franchising authorities have reluctantly accepted Verizon's position on this point, because the company is virtually uncompromising.[54] Thus, the intent of the rule has been circumvented entirely.

47 C.F.R. § 76.309(c)(2) prohibits cancellation of appointments after the close of business on the day before the appointment, and if a company representative cannot make an appointment on time, the appointment must be rescheduled at a time convenient to the customer. The rule does nothing to address the inability of providers to address an issue in a single visit.

[54] Two examples are the Montgomery County franchise, at Ex. D, § II(Y)(1), and the District of Columbia franchise, at Ex. D §3(B).

47 C.F.R. § 76.309(c)(3) purports to address communications between cable operators and subscribers, but in fact it merely sets maximum limits on when refunds and credits must be made. Subscribers are very much concerned with the process for their billing complaints to be resolved, but the Commission's rule is entirely silent on that point. As shown in Table 6, almost 40% of subscriber complaints concern billing. Cable operators often continue to bill even after an account has been disconnected, and automatic payments continue to be deducted from subscribers' bank accounts. Neither one of these problems is addressed by the rule. Furthermore, to the extent the rule does apply, it is honored only in the breach. Refunds take six to eight weeks to receive, and required credits are often not made. Operators routinely circumvent the rule by claiming that refunds must be issued by check cut from a separate corporate entity. In addition, subscribers who pay by automatic electronic debit often cannot receive refunds using the same automated process.

Finally, the Commission's standards only apply if expressly adopted by a community, and they include no enforcement mechanism. The existence of the standards allows operators to treat them as the default provision in any local franchise – "if they're good enough for the FCC they should be good enough for you" – but since they are largely ineffective, communities gain little by adopting them. The Cable Act and the Commission's rules permit more extensive local regulation, but the Commission has discouraged independent local action by permitting the costs of stricter regulation to be passed through to subscribers.[55] The threat of passing on the cost of more effective regulation has been enough to convince some local franchising authorities not to

[55] 47 C.F.R. §76.925(a)(3). This provision does not apply if a community is subject to effective competition – but many communities entered into franchise agreements when rate regulation was still in effect.

insist on stricter requirements. The overall effect of the Commission's rules is that customer service in most communities is essentially unregulated.

Thus, the Commission's current customer service rule is largely ineffective. Furthermore, the lack of effective rules is not being remedied by market forces. Oligopolies are not generally concerned with delivering high levels of customer service, especially if improving service requires a significant increase in costs. Ensuring good customer service is expensive because it requires significant numbers of trained personnel to respond to individual complaints. The effect of ILEC entry into the video market, however, has been to induce the cable industry to cut costs, and even before then the entire trend in customer service had been to reduce costs by centralizing customer service functions in regional call centers. In other words, the imperfectly competitive market that currently exists is not a substitute for regulation. Properly crafted rules, on the other hand, would offer subscribers a minimum level of protection and providers would be less tempted to cut corners.

To put it another way, effective federal regulation – or federal regulation that permits effective local regulation – would create an environment in which a certain level of customer service would be built into the system. If specific and effective standards were required by law, operators would find it much more difficult to justify cutting back in those areas, simply because the failure to comply would be a violation of the law. This would also benefit operators in dealing with pressure from investors, since investment in meeting the standards could be justified in the same way.

The Commission should initiate a proceeding to reexamine the customer service rules and develop new standards that actually address current problems. Furthermore, such a proceeding should address the issue of customer service regulation in state franchising states. The

Commission has always assumed that the local franchising authority would adopt and enforce customer service standards, and historically this has meant that local governments fulfilled that role. But the recent wave of state franchising statutes has eliminated the local role without necessarily replacing it with a significant state role. Most of the recent state franchising laws have adopted the FCC's standards, and then eliminated or limited local authority to enforce them. *See, e.g.*, Fla. Stat. § 610.108; Tx. Util. Code § 66.008; N.C. G.S.A. 66-356(b). One problem with this – as noted above – is that the Commission's current standards are not terribly relevant, so the states have vitiated cable customer service regulation: they impose ineffective standards, while precluding local governments from adopting effective ones. Very few states have adopted standards of their own, or even given any consideration to this issue, in part because they rely on the existence of the Commission's rule. In addition, even if a state undertakes to enforce whatever standards might apply, the effectiveness of that effort will depend entirely on the resources devoted to the task.

D. The Commission Should Expressly Endorse Local Regulation of Internet Customer Service Issues.

The Commission is not regulating Internet customer service, except on an *ad hoc* basis, such as its 2008 order on network management practices.[56] The states are not regulating Internet customer service. Montgomery County believes that Section 632 of the Communications Act permits the County to establish customer service standards pertaining to a cable operators' Internet access service, because the statute, by its terms, is not limited to video service. This is logical because in fact Internet access subscribers face much the same kinds of problems as confront cable subscribers. Indeed, at one point the Commission had been referring subscribers who complained to the Commission regarding Internet service to their local franchising

[56] *Memorandum Opinion* & *Order*, 23 FCC Rcd. 13,028 (2008).

authorities. The Commission should formally adopt that position and allow local franchising authorities to address Internet service issues in the same fashion they address cable service complaints.

Even though the statute can be construed to support local authority, franchising authorities have been wary of proceeding in the face of industry opposition. The industry's position, however is not entirely logical. Providers insist that they should not be required to obtain local franchises to provide Internet service, since they are using the same facilities they use to provide cable service – but by that logic local government should be permitted to handle resident complaints regarding Internet service. After all, the residents live in the local jurisdiction, the two services are provided by the same provider over the same plant, and Internet service is often bundled with cable service. It would be entirely logical to allow local governments to handle Internet customer service matters.

As shown on Table 6, 24.3% of complaints received by the Office of Cable and Communications Services in FY 2008 concerned Internet service. For the first three quarters of F Y 2009, 17.3% of complaints received had to do with Internet service. Consumers have problems, but only very limited recourse. The County urges the Commission to address this, on behalf of subscribers nationally.

V. THE COMMISSION SHOULD BASE FUTURE POLICY ON A CONSISTENT UNDERSTANDING OF THE NATURE OF THE RELEVANT MARKET.

For the reasons discussed above, the County believes that a fundamental reevaluation of the role of competition in the video programming market is in order. In addition, the County urges the Commission to adopt a consistent view of that market. In the past, the Commission has concluded that presence of certain competitors was relevant for some purposes and not for others. The County believes this inconsistency was not justified by the facts, and has led to faulty conclusions.

For example, in the interpretation of the definition of effective competition for purposes of rate regulation, the Commission has also held that DBS constitutes competition to the cable industry.[57] And yet, in various other contexts the Commission has repeatedly ruled that DBS competition did not restrain prices for cable service.[58] For example, in the Franchising Order, the Commission found that "new cable competition reduces rates far more than competition from DBS."[59]

Similarly, as discussed above, the Commission's policy regarding a range of issues affecting cable television subscribers and local franchising authorities has been determined by conclusions regarding the nature of the marketplace that were not based on conditions as they actually existed. So long as the Commission bases policy on the unfounded assumption that the presence of two wireline providers in a community is sufficient to make the MVPD market fully competitive, cable subscribers and the public interest will continue to be ill-served.

57 *In the Matter of Time Warner Entertainment-Advance/Newhouse Partnership Petition for Determination of Effective Competition in 24 Communities in the State of New York and the Commonwealth of Pennsylvania*, Memorandum Opinion and Order, 23 FCC Rcd. 18,355 (2008) (finding effective competition exists where community is served by 2 DBS providers).

58 *In the Matter of Implementation of Section 3 of The Cable Television Consumer Protection and Competition Act of 1992,* Report on Cable Industry Prices, 24 FCC Rcd. 259, 261 (2009) ("It does not appear from these results that DBS effectively constrains cable prices. Thus, in the large number of communities in which there has been a finding that the statutory test for effective competition has been met due to the presence of DBS service, competition does not appear to be restraining price as it does in the small number of communities with a second cable operator as reflected in Chart 1-a below."); *Thirteenth Annual Report*, 24 FCC Rcd. 542, 544-545 ("DBS competition appears to have led cable operators to add more programming services to their channel line-ups, it has not constrained cable prices as wireline competition has done").

59 *Franchising Order* at ¶ 50.

CONCLUSION

For all the foregoing reasons, Montgomery County urges the Commission to carefully reexamine its past assumptions about the nature, scope, and effectiveness of competition in the video market, and to reassess its policies in light of a more accurate understanding of the market.

Respectfully submitted,

Matthew C. Ames
Marci L. Frischkorn
Miller & Van Eaton, P.L.L.C.
1155 Connecticut Avenue N.W.
Suite 1000
Washington, DC 20036-46320
(202) 785-0600

E. Steven Emanuel, Chief Information Officer
Mitsuko R. Herrera, Cable Communications Administrator
Office of Cable and Communication Services
Montgomery County
100 Maryland Avenue, Room 250
Rockville, MD 20850

May 20, 2009

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming	MB Docket No. 07-269

DECLARATION OF RONDELLA M. HAWKINS IN SUPPORT OF COMMENTS OF MONTGOMERY COUNTY, MARYLAND

I, Rondella M. Hawkins, declare as follows:

1. I submit this declaration in support of the Comments submitted by Montgomery County in the above-captioned matter. I am the Manager of the Office of Telecommunications & Regulatory Affairs for the City of Austin. I am fully competent to testify to the facts set forth herein, and if called as a witness, I would testify to them.

2. Austin, Texas, currently has three wireline video programming providers: Time Warner, Grande Communications, and AT&T.

3. Texas adopted statewide franchising in 2005, but the state law has had no significant effect in Austin.

4. Grande had obtained its franchise in 2001, before the Texas legislation was enacted. Grande began serving subscribers in 2003.

5. Although Grande's entry gave subscribers a choice of providers, it has not led to reduced rates in Austin, as the table below shows:

Cable Service Rates in Austin, Texas

	2002	2003	2004	2005	2006	2007	2008
Time Warner							
Basic	8.58	8.58	$10.50	$10.50	$10.50	$14.95*	$16.95*
Grande							
Basic	--	$10.50	$10.50	$10.50	$13.50	n.a.	$16.95

*$19.95 for new subscribers.

6. AT&T did enter after the state law was passed, but it serves only a relative handful of subscribers in the city, and has shown no interest in competing vigorously.

7. It is impossible to evaluate the effect of AT&T's entry on prices, since AT&T does not offer a video-only subscription, but Grande's entry seems to have led to significant price increases.

8. As the table shows, after Grande entered the marketplace in 2003, Time Warner actually raised its rate for basic service to match Grande's.

9. When Grande raised its rate in 2006, Time Warner again raised its rate. Time Warner was held to be subject to effective competition in 2007, and today both companies charge existing subscribers the same rate of $16.95. The two tiers are roughly comparable, with 20 channels on Time Warner's basic tier and 17 on Grande's.

10. Time Warner subscribers are paying $8.37 a month more for basic service than they were in 2003, almost twice what they were paying at the time.

11. I declare under penalty of perjury that the facts stated herein are true and correct to the best of my knowledge and belief.

This declaration was executed on the 19th day of May, 2009, at Washington, DC.

Rondella M. Hawkins

Rondella M. Hawkins

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming	MB Docket No. 07-269

COMMENTS OF MONTGOMERY COUNTY, MARYLAND

Summary

Montgomery County, Maryland (the "County"), submits these comments in response to the Commission's Supplemental Notice of Inquiry (the "Supplemental NOI"),[1] to emphasize two points: first, the rates paid by subscribers for cable service continue to increase even in the face of competition; and second, those rates must be considered together with the very high rates that operators charge for equipment needed to obtain the service. Viewing the first in isolation from the second does not actually reflect the effect on consumers, and the effect of high equipment rates is underscored by the fact that consumers have no competitive alternatives for acquiring such equipment. The County also restates its concerns regarding the effects on consumers of the bundling of voice, video and data services, as discussed in its earlier comments in this docket.

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[1] *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Supplemental Notice of Inquiry, MB Docket 07-269 (rel. April 9, 2009). The Supplemental NOI asked for information as of June 30, 2008, and June 30, 2009, on the same issues raised in the preceding Notice of Inquiry in this docket, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Notice of Inquiry, MB Docket 07-269 (rel. Jan. 16, 2009) (the "NOI").

I. RATES FOR CABLE SERVICE CONTINUE TO INCREASE UNCHECKED.

The NOI requested information on the prices charged for various cable programming packages.[2] The rates charged by the three providers currently serving Montgomery County residents – Comcast, RCN and Verizon – appear in Table 1. As described in the County's comments of May 20, 2009, in this docket, and further illustrated in Table 1, the rates paid by subscribers for cable television services continue to increase. Notwithstanding the findings of the Commission, and arguments from providers that wireline competition "is the only form of competition that effectively restrains incumbent cable operators' prices,"[3] the County's experience shows that wireline competition does not restrain rates. For example, even though Comcast must compete with two wireline providers, Comcast's rate for basic service in the County increased by over 11% between 2007 and 2009 and its rate for the cable programming services tier increased by 9%.

Table 1 – Cable Service Rates in Montgomery County[4]

	2007	2008	2009	2007-09 % Increase
Comcast				
Basic	$17.30	$17.25	$19.25	11.3
Expanded Basic	$58.10	$60.35	$63.30	9.0
RCN				
Basic	n.a.	n.a.	$17.95	n.a.
Expanded Basic	$53.95	$56.94	$61.44	12.2
Verizon				
Basic	$12.99	$12.99	$12.99	0
Expanded Basic	$39.99	$47.99	$47.99	20.0

n.a. = price not available.

[2] NOI at ¶ 4.

[3] Comments of AT&T at 2-3 (filed May 20, 2009).

[4] Rates listed are those in effect on June 30 of each year.

Table 1 also shows that the competitors do not seem to be affected by competition any more than incumbents. Verizon has held its basic rate steady since 2007, but it has raised its expanded basic rate by 20% in just two years. In addition, Verizon recently informed the County that it will increase its rate for expanded basic service from $47.99 to $57.99 effective October 1, 2009. This will amount to a 45% rate increase in less than three years, and a year-over-year increase of 20.8%. And RCN's rate has increased by 12.2% since 2007.

The cable industry attempts to justify rate increases in excess of the general inflation rate by pointing to the investment the industry has made in new technology in response to competition, arguing that subscribers are getting more for their money.[5] This is beside the point, however, because the industry has made no attempt to prove that there is a clear or measurable relationship between those expenditures and what subscribers are paying. What is clear and measurable is that subscribers are paying more and more, with no end in sight. As the County discussed in detail in earlier comments in this docket, a fully competitive market for cable services does not exist in Montgomery County, and if it does not exist there, then it is unlikely to exist anywhere.[6] The Commission needs to reconsider both its assumptions and its policies.

II. AS CABLE OPERATORS CONVERT TO ALL-DIGITAL TECHNOLOGY, THE COMMISSION MUST LOOK CLOSELY AT EQUIPMENT RATES.

The NOI requested information on the prices charged for equipment needed to receive cable services.[7] Montgomery County's experience shows that head-to-head competition is not restraining rates for cable equipment any more than it is holding down monthly service rates. Furthermore, the effect of equipment rates on the total price a subscriber pays can be significant,

[5] NCTA Comments at 24 (filed May 20, 2009).

[6] Montgomery County Comments at 5-15 (filed May 20, 2009).

[7] NOI at ¶ 4.

yet the Commission's discussion of cable rates in recent years has paid little attention to equipment rates. For example, the Commission's most recent Report on Cable Industry Prices[8] devotes only a single paragraph to equipment prices, and does not discuss the effects of the price of mandatory equipment rental on the total price paid by subscribers. Nor does the most recent annual report on the state of competition in the video programming market discuss the effects of equipment prices on subscribers.[9]

The Commission in recent years may not have considered equipment prices to be a significant issue, because equipment rates have been relatively low. Of course, those rates have been low largely because they have been regulated. Today, however, fewer and fewer jurisdictions are able to regulate rates, as the Commission has, with few exceptions, granted petitions for findings of effective competition in community after community. In any event, regardless of the reason, subscribers in Montgomery County are paying substantial amounts to rent equipment, and recent trends suggest subscribers will continue to pay substantial amounts for equipment that they can obtain from no other source.

The trend toward higher charges for equipment is especially troubling because in 1996 the Commission was directed by Congress to create a competitive market for navigation equipment, but thirteen years later has yet to do so.[10] The County concurs with the comments filed earlier in this docket by Verizon (standards for navigation devices should not rely on cable-

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[8] *Implementation of Section 3 of the Cable Television Consumer Protection & Competition Act of 1992; Statistical Report on Average Rates for Basic Service, Cable Programming Services, and Equipment*, Report on Cable Industry Prices, MM Docket No. 92-266 (rel. Jan. 16, 2009, at ¶ 45.

[9] *Annual Assessment of the State of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, MB Docket No. 06-189 (rel. Jan. 16, 2009).

[10] Section 629 of the Communications Act was added by the Telecommunications Act of 1996, Pub. L. No. 104-104, which took effect Feb. 8, 1996.

centric technology)[11] and Verimatrix (FCC has not done enough to impose standards for consumer electronics).[12] Notwithstanding NCTA's claim that the cable industry is still working on the issue,[13] the County believes that the Commission has given the cable industry ample opportunity to comply with the statutory mandate.

Table 2 – Cable Equipment Rates in Montgomery County[14]

	2007	2008	2009
Comcast			
Basic only converter	$0.90	$1.10	$1.10
Addressable converter	$3.75	$3.70	$3.40
HD digital converter	$6.50	$7.95	$7.95
Remote control	$0.20	$0.25	$0.25
Cable Card	n.c.	n.c.	n.c.
Digital Adapter	n.a.	n.a.	$1.99
RCN			
Digital converter	$7.95	n.a.	$3.95
Additional converter	$7.95	n.a.	$6.95
HD converter	$9.95	n.a.	$11.95
DVR	$12.95	n.a.	$17.95
Cable Card	$1.50	n.a.	$1.50
Digital Adapter	n.a.	n.a.	$3.95
Verizon			
Std Def. Converter	$4.99	$4.99	$7.99
HD converter	$9.99	$9.99	$9.99
HD DVR	$12.99	$15.99	$15.99
HD Home Media DVR	$19.99	$19.99	$19.99
CableCard	n.a.	n.a.	$3.99
Digital Adapter	n.a.	n.a.	$3.99

n.c. = no charge n.a.= price not available

Table 2 contains the rates for cable equipment in Montgomery County for 2007, 2008 and 2009. The table shows that rates for traditional analog converters remain low, but both addressable converters used to deliver pay-per-view and other advanced services, and high definition converters, are much more expensive. For example, the monthly rates for HD

[11] Verizon Comments at 5 (filed May 20, 2009).

[12] Verimatrix Comments at 3-6 (filed May 20, 2009).

[13] NCTA Comments at 38-43 (filed May 20, 2009).

[14] Rates listed are those in effect on June 30 of each year.

converters are substantial: subscribers can pay $7.95 (Comcast), $9.99 (Verizon), or $11.95 (RCN). Comcast's rate for an addressable converter is three times that of a basic-only converter, and its rate for an HD converter is over seven times that of a basic-only box.

Furthermore, equipment rates add significantly to the total cost of obtaining cable service. Table 2 shows that Verizon charges $7.99 for its standard converter: this is 71% of the price for basic-only service. Comcast and RCN's rates for standard digital converters are lower -- $3.40 and $3.95, respectively -- but they still add over 5% to the monthly rate for expanded basic service.

Another factor the Commission must consider is that many subscribers have more than one television set. In fact, Comcast estimates that there are 2.8 television sets in the average household.[15] For the large number of subscribers in the County who have more than one television set, paying for a converter on every television set adds substantial amounts to their monthly bills. Table 3, on page 7, shows the effects of equipment charges on rates for subscribers who pay for service to more than one television set. Subscribers do have the option of paying lower rates for digital adapters, instead of set-top boxes, but these devices do not provide access to the on-screen program guide or to video-on-demand services. Thus, if a subscriber wants the benefit of the full capability of provider's technology, these devices are not adequate. Rates for digital adapters appear in Table 2.

[15] *Comcast's Montgomery Digital Network Enhancement and "The World of More,"* presentation by Comcast to Montgomery County (June 2009).

Table 3 – 2009 Rates for Service plus Equipment

	Service + one set	Increase over service only	Service + two sets	Increase over service only	Service + three sets	Increase over service only
Comcast						
Basic only (analog) + converter + remote	$20.60	7.0%	$21.95	14.0%	$23.30	21.0%
Expanded Basic + Addressable converter + remote	$66.95	5.8%	$70.60	11.5%	$74.25	17.3%
Expanded basic + HD digital converter + remote	$71.50	13.0%	$79.70	25.9%	$87.90	38.9%
RCN						
Basic + digital converter	$21.90	22.0%	$28.85	60.7%	$35.80	93%
Expanded basic + digital converter	$65.39	6.4%	$72.34	17.7%	$79.29	29.1%
Expanded basic + HD converter	$73.39	19.4%	$85.34	38.9%	$97.29	58.3%
Verizon						
Basic + standard definition converter	$20.98	61.5%	$28.97	123%	$36.96	184%
Expanded basic + standard definition converter	$55.98	16.6%	$63.97	33.3%	$71.96	49.9%
Expanded basic + HD converter	$57.98	20.8%	$67.97	41.6%	$77.96	62.4%

Table 3 and Figures 1 through 3 (*see* page 8) illustrate the dramatic effects of equipment rates on the amounts subscribers pay, especially in the case of Verizon. A Verizon basic-only subscriber renting a single converter will pay 61% more than the basic service price. A Verizon HD subscriber pays an extra 21%. The effects are even greater for subscribers with multiple televisions: if a Verizon subscriber has three sets and wants HD service on all of them, the subscriber will pay an additional 62%. A comparable RCN subscriber would pay an additional 58%, making the additional 39% paid by a comparable Comcast subscriber seem almost reasonable. In other words, equipment adds a lot to the rates subscribers pay, and the Commission needs to specifically address this issue in any discussion of the cost of cable service.

Figure 1: Basic Only With Equipment Rates

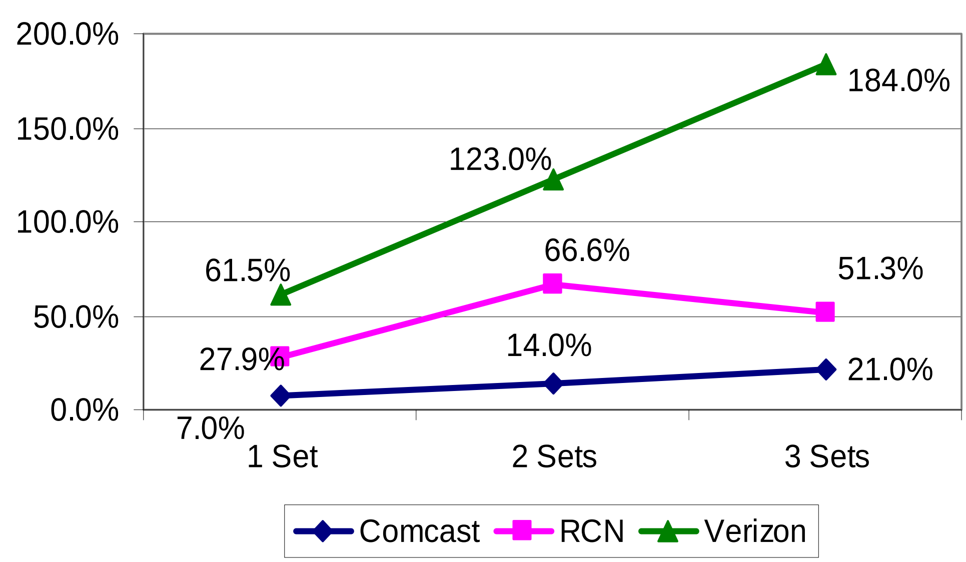


Figure 2: Expanded Basic With Equipment Rates

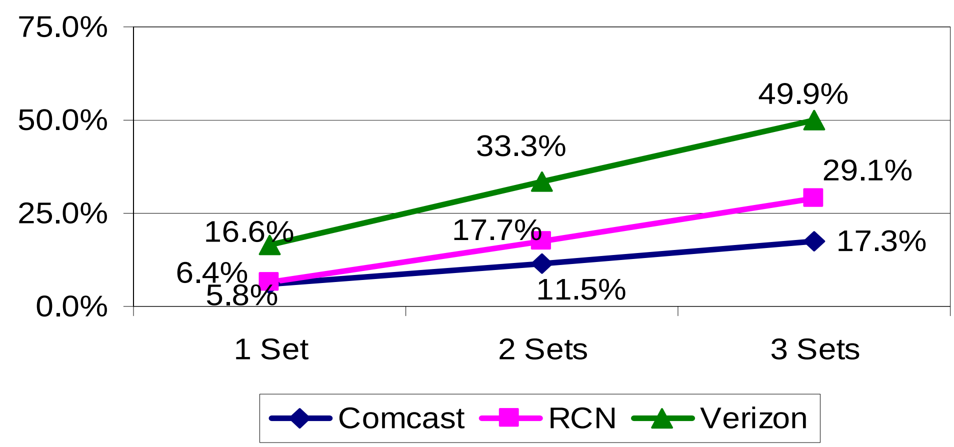
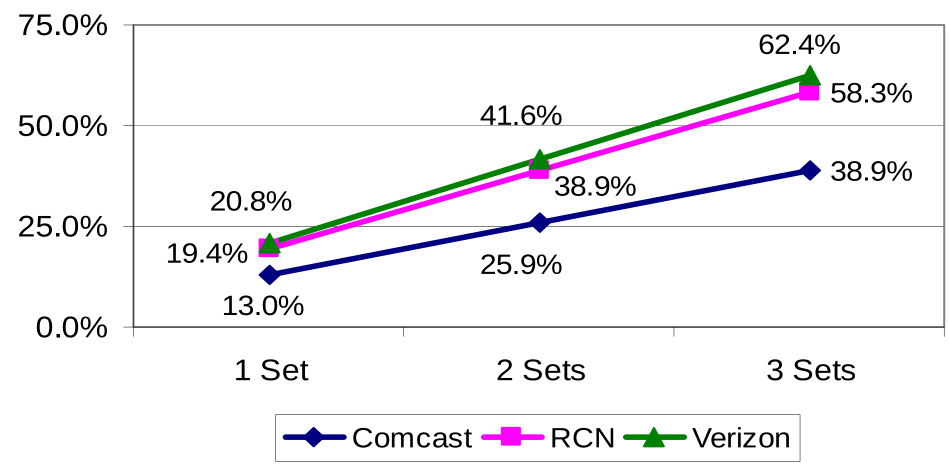


Figure 3: Expanded Basic HD With HD Equipment Rates



The effects of the failure to effectively decouple cable service from equipment rental will become even more pronounced as incumbent operators shift to all-digital systems. As discussed above, digital equipment is more expensive than older analog equipment, and until recently the rates for such equipment were contained in many jurisdictions by the application of the Commission's rate regulation rules. In view of how much Verizon and RCN are already charging for such equipment, in a non-rate-regulated environment there is no reason to believe that Comcast and other incumbents will not raise their rates for converter rentals. Furthermore, subscribers without digital televisions will be forced to pay for additional equipment – a converter or a digital adapter – to receive even unencrypted signals made available on basic tier service. Even if the provider offers CableCard at no charge, as Comcast does, some subscribers with older sets will still have to pay for other equipment, because a CableCard is useless if the set has no slot for the card.[16] Consequently, as cable operators abandon analog technology, they are simultaneously expanding their captive equipment rental market. Subscribers can only rent equipment from the operator, while the operator remains free to charge whatever rate it chooses.

III. BUNDLING DOES NOT PROMOTE COMPETITION.

In earlier comments in this docket, the County pointed out that bundling of voice, video and data services does not promote competition, because bundling makes it very difficult for consumers to compare service offerings, and because the costs of switching – such as the inconvenience associated with changing email addresses – are significant.[17] Other parties also addressed this issue in their earlier comments.

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[16] In addition, current generation CableCards do not allow subscribers access to program guides or other interactive features.

[17] Montgomery County Comments at 12-15 (filed May 20, 2009).

The County concurs with Comcast, which has observed that new entrants and incumbent cable operators use bundling to drive up their revenues per subscriber and to increase customer retention.[18] This suggests that bundling does not necessarily bring prices down, and that consumers find the costs of switching providers to be high. Bundling therefore does not advance competition.

The City of New Orleans has stated that the consumer benefits of bundling are not clear, because it is unclear whether consumers buy service bundles to get discounts or because of the convenience of getting all services from one provider.[19] The County questions, however, whether a careful examination of those two factors would demonstrate that bundling is truly beneficial. One of the problems with bundling is that consumers cannot really compare prices: they may pay a lower price for the bundle than they would for all three services from the same provider, but by taking the bundle they surrender the opportunity of getting the best price for the best level of service on each of the three services. Bundling thus results in fewer choices for consumers. Furthermore, after taking the bundle, consumers will find it more difficult to switch providers. Thus, the perceived benefits of bundling may in fact be drawbacks.

[18] Comcast Comments at 45 (filed May 20, 2009).

[19] Comments of Cable and Telecommunications Committee of the New Orleans City Council at 10-13 (filed May 20, 2009).

CONCLUSION

Montgomery County urges the Commission to carefully examine the reasons for continuing increases in cable rates, and especially to consider the effects of high equipment rates on subscribers.

Respectfully submitted,

Matthew C. Ames
Miller & Van Eaton, P.L.L.C.
1155 Connecticut Avenue N.W.
Suite 1000
Washington, DC 20036-46320
(202) 785-0600

E. Steven Emanuel, Chief Information Officer
Mitsuko R. Herrera, Cable Communications Administrator
Marjorie Williams, Franchise Manager
Office of Cable and Communication Services
Montgomery County
100 Maryland Avenue, Room 250
Rockville, MD 20850

July 29, 2009

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